

No. 10169

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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FOX WEST COAST AGENCY CORPORATION,  
a corporation,

Appellant,

vs.

JEAN L. FORSYTHE,

Appellee.

---

SUPPLEMENTAL

Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

FILED

OCT 27 1942



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States Circuit Court of Appeals  
For the Ninth Circuit

No. 10169

FOX WEST COAST AGENCY CORPORATION,  
Appellant,

vs.

JEAN L. FORSYTHE,

Appellee.

ORDER

This appeal is from a judgment of the District Court of the United States for the Southern District of California in an action by appellee against appellant and five other defendants. The action was brought in the Superior Court of Los Angeles County, but, on petition of appellant, was thence removed to the District Court. The record on appeal consists of an agreed statement prepared, signed and certified pursuant to Rule 76 of the Federal Rules of Civil Procedure. It includes appellee's amended complaint (filed in the District Court), but does not include the original complaint, the summons, the return (if any) showing service of summons, the petition for removal or the bond on removal. Thus the record fails to show that the case was removable, that it was properly removed or that the District Court had jurisdiction thereof. Therefore, it is hereby ordered as follows:

Appellant and appellee are given ten days within which they, or either of them, may procure and cause to be certified and transmitted by the clerk of

the District Court to the clerk of this court a supplemental record, as provided in Rule 75 (h) of the Federal Rules of Civil Procedure, such supplemental record to include the original complaint, the summons, the return (if any) showing service of summons, the petition for removal and the bond on removal. If this be not done within ten days from this date, the judgment will be reversed, and the case will be remanded to the District Court with directions to remand it to the Superior Court.

Dated October 15, 1942.

WILLIAM DENMAN  
CLIFTON MATHEWS  
ALBERT LEE STEPHENS  
United States Circuit  
Judges.

[Endorsed]: Order, etc. Filed Oct. 15, 1942. Paul P. O'Brien, Clerk.

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

LASHER B. GALLAGHER, Esq.  
458 S. Spring St.  
Los Angeles, Calif.

For Appellee:

ROSECRANS & EMME and  
BAYARD R. ROUNTREE, Esqs.  
515 Black Bldg.  
Los Angeles, Calif. [1\*]



In the Superior Court of the State of California  
In and for the County of Los Angeles

459395

JEAN L. FORSYTHE,

Plaintiff,

vs.

FOX WEST COAST AGENCY CORPORATION,  
a corporation, John Doe Company, a corpora-  
tion, Richard Roe Ltd., a corporation, John Doe,  
Richard Roe and Jane Doe,

Defendants.

COMPLAINT FOR DAMAGES FOR  
PERSONAL INJURIES

Comes Now the plaintiff and for cause of action  
against the above named defendants, and each of  
them, alleges:

I.

That during all the times herein mentioned the  
defendant, Fox West Coast Agency Corporation,  
has been and now is a corporation duly organized  
and existing under and by virtue of the laws of the  
State of Delaware, duly licensed to do business in  
the State of California, with its principal place of  
business in the County of Los Angeles, State of  
California.

II.

That the defendants, John Doe Company, a cor-  
poration, Richard Roe Ltd., a corporation, John

Doe, Richard Roe, and Jane Doe are sued herein under fictitious names as their true names are unknown to plaintiff herein, and plaintiff asks permission upon ascertaining the true names of said defendants to insert their true names in lieu of said fictitious names.

### III.

That during all the times herein mentioned the defendants John Doe Company and Richard Roe, Ltd. have been and now are corporations organized and existing under the laws of the State of California, with their principal place of business in the County of Los Angeles, State of California. [2]

### IV.

That the defendants, Fox West Coast Agency Corporation John Doe Company, and Richard Roe, Ltd. now and at all times mentioned herein are engaged in the business of operating and maintaining a motion picture theater known as the United Artists Theater which provides motion pictures and entertainment for the general public to view the same at certain costs of admission, said theater being located on South Broadway between Ninth and Tenth Streets in the City of Los Angeles, County of Los Angeles, State of California, and that the defendants John Doe, Richard Roe and Jane Doe are employees and agents of said defendants, Fox West Coast Agency Corporation, John Doe Company and Richard Roe Ltd. employed in said business of operating and maintaining the said United Artists Theater.

## V.

That on or about the 24th day of March, 1940, plaintiff paid an admission to the defendants to enter the aforesaid United Artists Theater to view the motion pictures and entertainment then and there being displayed by said defendants and that said defendants accepted said admission fee from said plaintiff and said plaintiff thereafter entered said theater; that after entering said theater plaintiff proceeded to a seat among those provided for the patrons of said theater. That at said time and place, due to the careless and negligent manner in which the defendants, and each of them, and their said employees maintained and operated the seats in the said theater when the plaintiff sat down upon said seat in said theater to view said picture show as aforesaid, the said seat collapsed causing her to be thrown violently to the side and down, thereby causing severe shock to her nervous system, bruises, abrasions, contusions and a severe sprain and wrenching of her lower back, all to her great pain and suffering; that it made her sick and sore and unable to attend to her business, and that as a result thereof plaintiff still suffers great [3] pain, and plaintiff is informed and believes that the above named injuries are permanent, all to her damage in the sum of Twenty Thousand Dollars (\$20,000.00).

## VI.

That the negligent and careless manner in which the defendants and their said employees and agents maintained and operated the seats in said theater

was the immediate and proximate cause of the aforesaid injuries received by the plaintiff.

#### VII.

That as a result of said injuries sustained by plaintiff as aforesaid, plaintiff was forced to incur doctors and physicians services in the reasonable sum of \$426.50, nurses hire in the reasonable sum of \$214.50, hospitalization in the reasonable sum of \$161.24, ambulance hire in the reasonable sum of \$10.00, brace in the reasonable sum of \$44.50, drugs and medical supplies in the reasonable value of \$158.83, all to her damage in the sum of \$1,015.57. That all of the aforesaid sums are the reasonable value of said services and were necessary for plaintiff to incur in the treating of her said injuries. That plaintiff will be forced to incur further services for the treatment of said injuries and will ask leave of court to amend this complaint to include said further expenses.

#### VIII.

The plaintiff at the time of said injury was employed and receiving compensation in the sum of \$94.90 per month, and that by reason of the injuries aforesaid, plaintiff was compelled to and did remain away from her work for a period of four months and four days, all to her damage in the sum of \$390.84.

Wherefore Plaintiff prays judgment against the defendants, and each of them in the sum of Twenty Thousand Dollars (\$20,000.00) general damages; for

the sum of \$1406.41 special damages, and for a further sum as special damages to be ascertained at the time of trial, together with her costs of suit [4] herein incurred, and for such other and further relief as to this court may seem meet and just.

ROSECRANS & EMME

By LEO M. ROSECRANS

Attorneys for Plaintiff.

State of California

County of Los Angeles—ss.

Jean L. Forsythe being by me first duly sworn, deposes and says: that she is the Plaintiff in the above entitled action; that she has read the foregoing Complaint and knows the contents thereof; and that the same is true of her own knowledge, except as to the matters which are therein stated upon her information or belief, and as to those matters that *he* believes it to be true.

JEAN L. FORSYTHE

Subscribed and sworn to before me this 19 day of December, 1940.

[Seal]

MARY LYNCH

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: No. 459395. Complaint for Damages for Personal Injuries. Filed Dec. 20, 1940. L. E. Lampton, County Clerk. By C. H. Holdredge, Deputy.

[Endorsed]: Filed Jul. 14, 1941. R. E. Zimmerman, Clerk. [5]

[Title of Superior Court and Cause.]

DEMURRER AND MEMORANDUM OF  
POINTS AND AUTHORITIES OF DE-  
FENDANT THOMAS SORIERO.

The defendant Thomas Soriero (sued herein as John Doe) demurs to plaintiff's complaint as follows:

I.

Said complaint does not state facts sufficient to constitute a cause of action against this defendant.

II.

Said complaint is uncertain in that it cannot be ascertained therefrom what, if any negligent act is meant to be charged by the language "that at said time and place, due to the careless and negligent manner in which the defendants, and each of them, and their said employees maintained and operated the seats in the said theatre when the plaintiff sat down upon said seat in said theatre to view said picture so as aforesaid, the said seat collapsed."

III.

Said complaint is uncertain in that it cannot be ascertained therefrom what negligent act is meant to be charged in paragraph V by the allegation that due to the careless and negligent manner in which the defendants maintained the seats in said theatre the seat collapsed, or what of the many acts and things which may be included within the

meaning of the verb “maintained” is meant to be charged as a negligent or careless act.

IV.

Said complaint is uncertain in that it cannot be ascertained therefrom what the plaintiff means to allege or charge in [6] paragraph V by the allegation that due to the careless and negligent manner in which the defendants and their employees operated the seats in the theatre a certain seat collapsed for the reason that a seat is not ordinarily operated and what the plaintiff means by the use of the verb “operated” cannot be discovered from any allegation in the complaint.

V.

The allegations of paragraph VI are uncertain in that it cannot be ascertained therefrom what negligent or careless act is meant to be charged against this defendant with reference to the maintenance of any seat in the theatre or with reference to operation of any seat in the theatre or how the defendant could have operated any seat in said theatre.

Wherefore defendant prays that his demurrer be sustained and that he recover his costs incurred herein.

LOWELL L. DRYDEN

Attorney for defendant

Thomas Soriero.

I hereby certify that the foregoing demurrer is not interposed for the purpose of delay and is, in my opinion, well taken in point of law.

LOWELL L. DRYDEN [7]

MEMORANDUM OF POINTS AND  
AUTHORITIES

The defendant Thomas Soriero was sued herein as John Doe (see summons showing that the complaint was served on this defendant as John Doe). The allegation in paragraph IV is that the defendant John Doe is an employee and agent of the defendants Fox West Coast Agency Corporation, John Doe Company and Richard Roe Ltd. The complaint alleges that the corporate defendants are engaged in the business of operating and maintaining a motion picture theatre. It is quite obvious from these allegations that this defendant is not charged with maintaining or operating the theatre or with any status which would make him an invitor of the plaintiff. The complaint does not state facts sufficient to constitute a cause of action against this defendant individually because it does not show any facts from which it would appear that this defendant invited the plaintiff to enter the theatre or that the plaintiff was an invitee of this defendant. This defendant may, as an employee of the corporate defendants, have agreed to inspect the equipment of the theatre and he may have failed in his obligation but his failure does not give the plaintiff any right of action because the obligation which this defendant would thus have failed to perform was an obligation placed upon him solely by a contract between this defendant and the owner of the theatre and was not a duty which this defendant owed to the general public or to the plaintiff



or to any other invitee. In other words, he may have failed in his contractual obligation to the owner of the theatre but this would not make him individually liable to an invitee of the owner of the theatre. In support of this proposition defendant relies on the case of *Strattons Independence Ltd. v. Sterrett*, 117 p. 351.

In support of the special demurrer, defendant calls the attention of the court to the following cases:

- Newell v. Woodward, 270 N. Y. S. 258
- Shanley v. American Olive Co. 185 Cal. 552, 197 P. 793. [8]
- Mautino v. Sutter Hospital Assn. 211 Cal. 556, 296, P. 76
- Blodgett v. B. H. Dyas Co., 4 Cal. (2d) 511, 50 P. (2d) 801
- Warnke v. Griffith Co. 133 Cal. App. 481, 24 P. (2d) 583
- Crawford v. Pac. States Sav. etc. 22 Cal. App. (2d) 448, 71 P. (2d) 333
- Reinhard v. Lawrence Warehouse Co. 107 P. (2d) 501

It is respectfully submitted that the demurrer should be sustained.

LOWELL L. DRYDEN

Attorney for defendant

Thomas Soriero

[Affidavit of Service by Mail \* \* \*]

\* \* \* \* \*

[Endorsed]: Filed Jan. 6, 1941. L. E. Lampton, County Clerk. By C. H. Holdredge, Deputy.

[Endorsed]: Filed Jul. 14, 1941. R. S. Zimmerman, Clerk. [9]

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In the Superior Court of the State of California  
In and for the County of Los Angeles  
January 10, 1941

Present Hon. Frank G. Swain Judge Presiding

No. 459395

Department No. 35

[Title of Cause.]

Demurrer of Defendant Fox West Coast Agency Corporation to complaint and Demurrer of Defendant Thomas Soriero to complaint come on for hearing; Rosecrans & Emme by L. M. Rosecrans appearing as attorneys for the plaintiff and Lasher B. Gallagher and L. Dryden for defendants demurring. Demurrer of defendant Fox West Coast Agency Corporation to complaint is overruled; defendant named is given 10 days to answer. Demurrer of defendant Thomas Soriero to complaint is sustained; plaintiff is given 10 days to amend.

[Endorsed]: Filed Jul. 14, 1941. R. S. Zimmerman, Clerk. [10]

[Title of Superior Court and Cause.]

PARTIAL DISMISSAL

To the Clerk of Said Court:

You will enter the dismissal of the above entitled action. Only as to the defendant Thomas Soriero, sued herein as John Doe Los Angeles, Cal., January 14, 1941.

ROSECRANS & EMME

By LEO M. ROSECRANS

Attorney for Plaintiff.

Note: Where affirmative relief is sought in Answer or Cross-complaint, Dismissal must also be signed by the attorney for the defendant.

[Endorsed]: Filed Jan. 15, 1941. L. E. Hampton, County Clerk. By M. F. Gift, Deputy.

[Endorsed]: Filed Jul. 14, 1941. R. S. Zimmerman, Clerk. [11]

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[Title of Superior Court and Cause.]

ANSWER OF DEFENDANT FOX WEST  
COAST AGENCY CORPORATION, a corporation

Comes now the defendant Fox West Coast Agency Corporation, a corporation, and answers the complaint of plaintiff on file herein, as follows:

I.

Defendant has no information or belief upon the subject sufficient to enable it to answer the allega-

tions, or any thereof, contained in paragraphs II, III, VII and VIII of said complaint and placing its denial thereof upon said ground, denies said allegations and each thereof.

## II.

Defendant has no information or belief upon the subject sufficient to enable it to answer the allegations in paragraph IV that "the defendants John Doe, Richard Roe and Jane Doe are employees and agents of said defendants, Fox West Coast Agency Corporation, John Doe Company and Richard Roe Ltd. employed in said business of operating and maintaining the said United Artists Theater," and placing its denial thereof upon said ground, denies said allegations and each thereof.

## III.

The balance of the allegations in paragraph IV are, and each thereof is, denied.

## IV.

Defendant has no information or belief upon the subject sufficient to enable it to answer the allegations in paragraph V from and including the words "That on or about the 24th day of [12] March, 1940," line 25, page 2, to and including the words "provided for the patrons of said theater", line 32, page 2 of said complaint, and placing its denial thereof upon said ground, denies said allegations and each thereof.

Defendant denies each and every allegation con-

tained in said paragraph V from and including the Words "That at said time", line 32, page 2 to and including the figures "\$20,000.00," line 14, page 3 of said complaint.

V.

Defendant denies the allegations and each thereof contained in paragraph VI of said complaint.

VI.

This defendant denies that the plaintiff has been damaged in any sum whatsoever or at all or that plaintiff was injured by reason of any act or omission of this defendant.

\* \* \* \* \*

As and for a First, Separate and Special Defense, defendant alleges that on or about the 24th day of March, 1940, the plaintiff so negligently, carelessly and recklessly conducted herself while in the United Artists Theatre in the City of Los Angeles, California, immediately prior to and at the time she seated herself in a certain seat in said theatre, that any injury or damage sustained by plaintiff was a proximate result of said negligence, carelessness and recklessness on her part.

As and for a Second, Separate and Special Defense, defendant is informed and believes, and therefore, alleges that the plaintiff, at all times mentioned in her complaint, was an excessively obese person and that the said plaintiff was fully aware of the fact that her weight exceeded by a very great number of pounds the weight of the average person and the said plaintiff, at all times knew, or

should have known, that seats in theatres and places of public accommodation are designed for the purpose of accommodating persons of normal size and normal [13] and near normal weight and the plaintiff knew, at all times, that no seat in any theatre was designed for the purpose of accommodating a person of the grossly excessive weight and size as the plaintiff and with knowledge of all of the said facts, the plaintiff failed to use a certain seat in defendant's theatre in a manner commensurate with her excessive weight and excessive size and by reason thereof the plaintiff tore said seat apart and broke the same and the said plaintiff assumed any and all risk of injury which might ensue by reason of her failure to make proper allowance for the fact that she was using a seat which was not and could not have been designed for the accommodation of a person of the size and weight of the plaintiff.

Wherefore, defendant prays that plaintiff take nothing by her said complaint and that defendant have judgment for its costs incurred and to be incurred herein.

LASHER B. GALLAGHER

Attorney for defendant Fox  
West Coast Agency Corporation,  
a corporation. [14]

State of California  
County of Los Angeles—ss.

John B. Bertero being by me first duly sworn,  
deposes and says: that he is the Assistant-Secretary

of Foxt West Coast Agency Corporation, a corporation, in the above entitled action; that he has read the foregoing answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

JOHN B. BERTERO

Subscribed and sworn to before me this 17th day of January, 1941.

[Seal] ANN FRIEDLUND

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires January 12, 1944.

[Endorsed]: Received copy of the within this 18 day of Jan., 1941. Rosecrans & Emme G Attorneys for Pltff.

[Endorsed]: Filed Jan. 20. L. E. Lampton, County Clerk. By B. B. Burrus, Deputy.

[Endorsed]: Filed Jul. 14, 1941. R. S. Zimmerman, Clerk. [15]

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[Title of Superior Court and Cause.]

NOTICE OF TRIAL

To the Defendant, Fox West Coast Agency Corporation, a corporation, and to its attorney, Lasher B. Gallagher:

You, and Each of You, Will Please Take Notice that the above entitled case is set for trial in the Department of the Presiding Judge, Room 806,

Hall of Records, on the 18th day of June, 1941, at the hour of 9:30 o'clock a. m. or as soon thereafter as counsel can be heard.

Dated: April 25, 1941.

ROSECRANS & EMME

By OTTO J. EMME

Attorney for Plaintiff.

[Endorsed]: No. 459395. Notice of Trial. Received copy of the within Notice of trial this 29 day of April, 1941. Lasher B. Gallagher. By D. Meyer, Attorney for defendant.

[Endorsed]: Filed Apr. 29, 1941. L. E. Lampton, County Clerk. By B. B. Burrus, Deputy.

[Endorsed]: Filed Jul. 14, 1941. R. S. Zimmerman, Clerk. [16]

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[Title of Superior Court and Cause.]

NOTICE OF FILING PETITION AND BOND  
FOR REMOVAL TO DISTRICT COURT  
OF THE UNITED STATES

To the plaintiff in the above entitled action and to her attorneys Messrs. Rosecrans & Emme:

You and Each of You Will Please Take Notice, and you are hereby notified that the defendant Fox West Coast Agency Corporation, a corporation, will, on Wednesday, June 18th, 1941, at the hour of 10 A. M. of said day, or as soon thereafter as counsel can be heard in Department 13 of the above entitled court, present to the above entitled court



said defendant's petition and bond for removal of said cause from the said Superior Court of the State of California, in and for the County of Los Angeles, to the District Court of the United States, Southern District of California, Central Division.

Said petition and motion will be filed and made upon the ground that there is a diversity of citizenship between the plaintiff and the said defendant and petitioner Fox West Coast Agency Corporation, a corporation, and that the plaintiff has signified her intention to proceed against the defendant and petitioner Fox West Coast Agency Corporation, a corporation, solely, said defendant and petitioner being a citizen of the State of Delaware, and upon the further ground that the amount in controversy is the sum of \$21,406.41, exclusive of interest and costs, lawful money of the United States, and said petition and motion will be based upon the complaint, this notice, the petition for removal, the bond for removal and all the records [17] and files of this action, true copies of which notice, petition and bond, are herewith served upon you.

Dated: June 18th, 1941.

LASHER B. GALLAGHER

Attorney for defendant and  
petitioner, Fox West Coast  
Agency Corporation, a corporation.

[Endorsed]: Filed Jun. 18, 1941. L. E. Lampton,  
County Clerk. By T. C. Hutton, Deputy.

[Endorsed]: Filed Jul. 14, 1941. R. S. Zimmerman,  
Clerk. [18]

[Title of Superior Court and Cause.]

PETITION FOR REMOVAL TO  
FEDERAL COURT

Comes now the defendant Fox West Coast Agency Corporation, a corporation, and files this its petition for removal of this cause from the above entitled Superior Court, in which it is now pending, to the District Court of the United States, Southern District of California, Central Division, held at the City of Los Angeles, in the said District and State, and in this behalf, your petitioner respectfully shows:

I

That this action was commenced in the above entitled court by the filing of a complaint on the 20th day of December, 1940, that in said complaint the plaintiff alleges under oath, "that during all the times herein mentioned, the defendants John Doe Company and Richard Roe, Ltd. have been and now are corporations organized and existing under the laws of the State of California, with their principal place of business in the County of Los Angeles, State of California" and the plaintiff also alleges, "that the defendants, Fox West Coast Agency Corporation, John Doe Company, and Richard Roe, Ltd. now and at all times mentioned herein are engaged in the business of operating and maintaining a motion picture theater known as the United Artists Theater which provides motion pictures and entertainment for the general public to view the same at certain costs of admission, said

theater being located on South Broadway between Ninth and Tenth Streets in the City of Los Angeles, County of Los Angeles, [19] State of California", and whereas, in said complaint, the plaintiff alleges that she was an invitee of all of said defendants, to wit, your petitioner and John Doe Company and Richard Roe Ltd., the latter two being alleged to have been organized and existing under the laws of the State of California, and, whereas, no process of any kind has been served insofar as the defendants John Doe Company and Richard Roe Ltd. are concerned, but the plaintiff has announced her intention to ignore the defendants who are residents of the State of California and to proceed solely against your petitioner, the said petitioner hereby objects to said procedure and demands that this action be forthwith removed to the United States District Court, hereinabove referred to.

## II

This is a civil action at law of which the District Courts of the United States have original jurisdiction; it is an action for the recovery of \$21,406.41, exclusive of interest and costs, lawful money of the United States; no special bail was or is required.

## III

Your petitioner alleges that the cause of action against this petitioner is upon an alleged tort in that the plaintiff alleges that she was an invitee of petitioner and that by reason of alleged negligence on the part of petitioner, the plaintiff was injured.

Petitioner alleges that at all times mentioned in the plaintiff's complaint it has been and now is a corporation, organized and existing pursuant to the laws of the State of Delaware and that the plaintiff herein is a resident and citizen of the State of California.

#### IV

The plaintiff has fraudulently joined as defendants in said complaint, the other defendants alleged to be residents of the State of California, for the purpose of attempting to prevent petitioner from removing this case to the United States District [20] Court.

#### V

Petitioner files herewith a good and sufficient bond in the sum of \$500.00 as required by the acts of Congress on that behalf made and provided for entry in the District Court of the United States, Southern District of California, Central Division, within thirty days from the filing of this petition, of a certified copy of the records in this action and for paying all costs that may be awarded by said District Court if it shall hold that such action was wrongfully or improperly removed thereto.

Petitioner therefore prays, that this Honorable Court proceed no further herein, except to accept the bond herewith presented and order the removal of this action to the District Court of the United States, Southern District of California, Central Division, in which District the above action is pend-

ing and direct that a transcript of the record be made and certified as provided by law.

Dated: June 18th, 1941.

FOX WEST COAST AGENCY  
CORPORATION,

a corporation,

By JOHN B. BERTERO,

Assistant Secretary-Peti-  
tioner.

LASHER B. GALLAGHER,

Attorney for Petitioner.

State of California,

County of Los Angeles—ss.

John B. Bertero, being by me first duly sworn, deposes and says: that he is the Assistant Secretary of Fox West Coast Agency Corporation, a corporation, and as such officer makes this verification for and on behalf of said corporation, in the above entitled action; that he has read the foregoing Petition for Removal to Federal Court and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, [21] and as to those matters that he believes it to be true.

JOHN B. BERTERO.

Subscribed and sworn to before me this 18th day of June, 1941.

[Seal]

ENES SARVELLO,

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Jun. 18, 1941. L. E. Lampton, County Clerk. By T. C. Hutton, Deputy.

[Endorsed]: Filed Jul. 14, 1941. R. S. Zimmerman, Clerk. [22]

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[Title of Superior Court and Cause.]

BOND ON REMOVAL OF CAUSE TO UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Know All Men By These Presents:

That we, Fox West Coast Agency Corporation, a Corporation, as Principal, and Occidental Indemnity Company, a corporation, duly organized and existing under and by virtue of the laws of the State of California, as surety, are held and firmly bound unto Jean L. Forsythe, Plaintiff, in the above entitled suit, in the sum of Five Hundred and No/100 Dollars (\$500.00) lawful money of the United States of America, for the payment of which said sum well and truly to be made, we, and each of us, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

The conditions of this obligation are such that, Whereas, said Fox West Coast Agency Corporation, a Corporation, has applied, or is about to apply, by a petition to the above entitled court, for the removal of a certain suit pending therein, wherein Jean L. Forsythe is Plaintiff and said Fox West

Coast Agency Corporation, a Corporation, is Defendant, to the District Court of the United States for the Southern District of California, Central Division, said District Court being the District Court to be held in the district in which such suit is pending, and for staying of further proceedings in said suit from the above entitled court upon the grounds in said petition set forth; Now, Therefore, if Fox West Coast Agency Corporation, a Corporation, shall enter in said District Court of the United States for the Southern District of California, Central Division, within [23] thirty (30) days from the date of filing said petition, a certified copy of the record in the above entitled suit and shall pay all costs that they may be awarded by the said District Court, if said District Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise it shall remain in full force and effect.

Dated June 18th, 1941.

FOX WEST COAST AGENCY  
CORPORATION,

[Seal] By JOHN B. BERTERO,  
Asst. Secy., Principal.

OCCIDENTAL INDEMNITY  
COMPANY,

[Seal] By L. H. SCHWOBEDA,  
Attorney in Fact.

State of California,  
County of Los Angeles—ss.

On this 18th day of June, 1941, before me, M. E. Beeth, a Notary Public in and for said County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared L. H. Schwobeda known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Occidental Indemnity Company and acknowledged to me that he subscribed the name of Occidental Indemnity Company thereto as principal, and his own name as attorney in fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the said County of Los Angeles the day and year in this certificate first above written.

[Seal]                    M. E. BEETH,  
Notary Public in and for the County of Los Angeles, State of California.

My commission expires March 23, 1945. [24]

The within Bond is hereby approved this 18th day of June, 1941.

PARKER WOOD,  
Judge of the Superior Court of the State of California, in and for the County of Los Angeles.

[Endorsed]: Filed Jun. 18, 1941. L. E. Lamp-ton, County Clerk. By T. C. Hutton, Deputy.

[Endorsed]: Filed Jul. 14, 1941. R. S. Zimmerman, Clerk. [25]



In the Superior Court of the State of California  
in and for the County of Los Angeles

June 18, 1941

Present Hon. Parker Wood, Judge Presiding  
No. 459395  
Department No. 13

[Title of Cause.]

Cause transferred from department one, is called for trial; Rosecrans and Emme appear as counsel for the plaintiff and Lasher B. Gallagher appears as counsel for the defendant. Gene C. Campbell, reporter, is present from 10:00 A. M. to 4:00 P. M. The petition of defendant for removal to the Federal Court is granted and the cause is ordered removed to the United States District Court, Southern District of California, Central Division. Bond on removal is approved and proceedings herein are ordered suspended.

[Endorsed]: Filed Jul. 14, 1941. [26]

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[Title of Superior Court and Cause.]

### ORDER FOR REMOVAL

Upon reading and filing the petition of the defendant Fox West Coast Agency Corporation, a corporation, for removal of the above entitled action to the District Court of the United States, Southern

District of California, Central Division, and upon an examination of the bond also filed and presented herewith, and good cause appearing therefor;

It Is Hereby Ordered that the bond presented and filed with petitioner's petition for removal is hereby approved.

It Is Further Ordered that the above entitled action be, and it is hereby transferred and removed to the said District Court of the United States, Southern District of California, Central Division, and it is further ordered that the clerk of the above entitled court prepare a certified copy of the record in the above entitled action and transmit the same to the clerk of the said District Court of the United States, Southern District of California, Central Division.

Done in open court this 18th day of June, 1941.

PARKER WOOD,

Judge of the Superior Court.

[Endorsed]: Filed Jun. 18, 1941. L. E. Lampton, County Clerk. By T. C. Hutton, Deputy.

[Endorsed]: Filed Jul. 14, 1941. R. S. Zimmerman, Clerk. [27]

No. 459395

State of California

County of Los Angeles—ss.

I, L. E. Lampton, County Clerk and ex-officio Clerk of the Superior Court in and for the County and State aforesaid, do hereby certify the foregoing copies of documents and orders consisting of Complaint, Demurrer of Fox West Coast Agency Corporation including Memorandum of Points and Authorities, Demurrer of Thomas Soriero including Memorandum of Points and Authorities, Minute Order of January 10, 1941 in re demurrers, Partial Dismissal, Notice of Ruling on Demurrer, Memorandum of Costs and Disbursements, Answer of Fox West Coast Agency Corporation, Memorandum for setting for trial, Minute Order of April 22, 1941, Notice of Trial, Affidavit for Issuance of Subpoena to take Deposition, Notice of taking deposition, Affidavit for and Order shortening time of service of notice of taking deposition, Affidavits for Subpoena Duces Tecum (4), Minute Order transferring cause to Department 13, Notice of Filing and Hearing petition for removal, Petition for Removal, Bond on Removal, Minute Order granting petition for removal, and written Order for Removal to the District Court of the United States for the Southern District of California (Central Division), in the action of Jean L. Forsythe vs. Fox West Coast Agency Corporation, a corporation, et al., to be full, true and correct copies of

all of the original documents on file and/or of record in this office in said action, to date.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Superior Court this 12th day of July, 1941.

L. E. LAMPTON,

County Clerk and ex-officio  
Clerk of the Superior  
Court of the State of Cali-  
fornia, in and for the  
County of Los Angeles.

[Seal] By M. B. WARD

Deputy

[Endorsed]: Filed Jul. 14, 1941. [28]

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[Title of Superior Court and Cause.]

ACTION BROUGHT IN THE SUPERIOR  
COURT OF THE COUNTY OF LOS AN-  
GELES, AND COMPLAINT FILED IN  
THE OFFICE OF THE CLERK OF THE  
SUPERIOR COURT OF SAID COUNTY

Summons

The People of the State of California Send Greet-  
ings to:

Fox West Coast Agency Corporation, a corpo-  
ration, John Doe Company, a corporation, Richard  
Roe Ltd., a corporation, John Doe, Richard Roe  
and Jane Doe, Defendant.

You are directed to appear in an action brought against you by the above named plaintiff in the Superior Court of the State of California, in and for the County of Los Angeles, and to answer the complaint therein within ten days after the service on you of this Summons, if served within the County of Los Angeles, or within thirty days if served elsewhere, and you are notified that unless you appear and answer as above required, the plaintiff will take judgment for any money or damages demanded in the Complaint, as arising upon contract, or will apply to the Court for any other relief demanded in the Complaint.

Given under my hand and seal of the Superior Court of the County of Los Angeles, State of California, this 20 day of December, 1940.

[Seal Superior Court Los Angeles County]

L. E. LAMPTON,

County Clerk and Clerk of  
the Superior Court of the  
State of California, in and  
for the County of Los An-  
geles.

By C. H. HOLDREDGE

Deputy [29]

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Appearance: "A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an

attorney gives notice of appearance for him.” (Sec. 1014, C. C. P.)

Answers or demurrers must be in writing, in form pursuant to rule of court, accompanied with the necessary fee, and filed with the Clerk.

State of California,  
County of Los Angeles—ss.

Affidavit of Service

459395

The undersigned being sworn, says: I am and was at the time of the service of the summons herein, over the age of eighteen years, and not a party to the within entitled action; I personally served the within Summons on the hereinafter named defendants, by delivering to and leaving with each of said defendants personally, in the County of Los Angeles, State of California, at the address and the time set opposite their names, a copy of said Summons attached to a copy of the Complaint referred to in said Summons.

Name of Defendants served, City and Street Address, Date of Service:

Fox West Coast Agency Corporation by serving John Bertero, Asst. Secretary, Los Angeles, Dec. 27, 1940.

Tom Soriero sued herein as John Doe, Los Angeles, Dec. 27, 1940.

My fees for services are \$1.00 for 6 miles actually traveled at 25 cents per mile, \$1.50, Total, \$2.50.

(Signed) EUGENE M. FINAN.

Subscribed and sworn to before me this 28 day of December, 1940.

L. E. LAMPTON,

County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

By .....

Deputy

[Seal] MARY LYNCH

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Jul. 14, 1941. [30]

In the District Court of the United States  
Southern District of California  
Central Division

No. 1649—O’C—Civil

JEAN L. FORSYTHE,

Plaintiff,

vs.

FOX WEST COAST AGENCY CORPORATION,  
a corporation, et al.,

Defendants.

CERTIFICATE OF CLERK TO  
SUPPLEMENTAL TRANSCRIPT

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of

California, do hereby certify that the foregoing pages numbered from 1 to 30 inclusive contain full, true and correct copies of Complaint for Damages for Personal Injuries; Demurrer and Memorandum of Points and Authorities of Defendant Thomas Soriero; Minute Order of Superior Court dated January 10, 1941; Partial Dismissal; Answer of Defendant Fox West Coast Agency Corporation; Notice of Trial; Notice of Filing Petition and Bond for Removal to District Court of the United States; Petition for Removal to Federal Court; Bond on Removal of Cause to United States District Court, Southern District of California, Central Division; Minute Order of Superior Court dated June 18, 1941; Order for Removal; Certificate of Clerk of the Superior Court and Summons which constitute the supplemental record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the fees of the clerk for comparing, correcting and certifying the foregoing record amount to \$11.15, which amount has been paid to me \$4.30 by the Appellee and \$6.85 by the Appellant.

Witness my hand and the seal of the said District Court this 22 day of October, A. D. 1942.

[Seal]

EDMUND L. SMITH,

Clerk

By THEODORE HOCKE

Deputy Clerk.



[Endorsed]: No. 10169. United States Circuit Court of Appeals for the Ninth Circuit. Fox West Coast Agency Corporation, a corporation, Appellant, vs. Jean L. Forsythe, Appellee. Supplemental Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed October 22, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

